FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 4 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 241

W. W. WATTS, *Petitioner,*

v.

THE UNITED STATES OF AMERICA, *Respondent*

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

---

REPLY BRIEF OF PETITIONER

BERNARD A. GOLDING,
432 Niels Esperson Bldg.,
Houston, Texas,
Counsel for Petitioner

ALPHA LAW BRIEF CO., HOUSTON

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 241

W. W. WATTS, *Petitioner,*

v.

THE UNITED STATES OF AMERICA, *Respondent*

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

---

REPLY BRIEF OF PETITIONER

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

A.

On pp. 11-12 of its brief, the United States concedes "* * * that the proof did not relate to the same automobiles as were charged in the information * * * " Hence, this conviction does *not* rest upon the conditions and standards authorized by Congress. And too, the presumption of innocence

in favor of Petitioner until proven otherwise by legal evidence is now disregarded.

On pp. 2-3, the Government quotes the applicable statute establishing that "good faith" and the definition of "used cars" are essential elements of the offense.

The Government does not question that these issues were *not* submitted to the jury. It does *not* dispute that there was no proof offered on either issue by the Government.

Although Congress has fixed by this statute the basis upon which legal conviction may obtain in this cause, and although this Court has sanctioned such conditions (M. KRAUS & BROS. v. U. S., 327 U.S. 614), the United States in its brief (p. 9) asserts, mistakenly we believe, that "good faith" " * * * has no relation to this cause * * * " but cites no authority, and cannot cite any, to support such conclusion. The case of HORSLEY v. U. S. (5 Cir.), 160 F. (2d) 43, is one in point, and contrary to the position taken by the Government in this regard.

The cases adverted to on p. 9, do not treat the issue of "good faith" and the definition of "used cars." Such cases relate solely to the term "willful." Since no point has been made as to the definition given in this respect, the cited cases import no relevancy.

On p. 10, the Government cites UNITED STATES v. BAYER, 67 S. Ct. 1394, 1396, as authority to justify failure of the trial judge to charge the jury in this cause upon the essential elements (cf. U. S. v. AUSMEIER, (2 Cir.), 152 F. (2d) 349, 358). The holding in the BAYER case, " * * * that the trial court was within its area of discretion in its brevity," is *not* applicable to the case at bar because, as pointed out by MR. JUSTICE JACKSON in UNITED STATES v. BAYER, 67 S. Ct. at p. 1396, the trial judge in that case had " * * * made an accurate and correct charge, * * * " and "the extent of its amplification must rest largely in his discretion. The trial

judge in the light of the whole trial and with the jury before him may feel that to repeat the same would make them no more clear, and to indulge in variations of statement might well confuse." Here, the issue of "good faith," the definition of "used car," as well as every hint of the applicable law and the elements of the crime charged, were withheld from the jury by the trial judge.

Moreover, it is notable that the Government does *not* contest the apparent conflict between the decision in this case and those of this Court and of the several Circuit Courts (Pet. 13-16).

B.

On p. 10, attorneys for the Government seek to apply to this cause the rule of JOHNSON v. U. S., 318 U.S. 189, 201, to the effect that a defendant may not assume one course during the trial and repudiate it on appeal. Government counsel's mistake and inadvertance in this regard is likely due to the fact none of them participated in the trial in the District Court.

Petitioner argued and contended throughout via *Motion to Dismiss* (R. 16-18), *Application to file in the Court of Emergency Appeals* (R. 19-21), *Motions for Acquittal* (R. 205-210, 243), and *Motion for New Trial* (R. 27-29), that the information should have been *dismissed* since none of it was good. Further, by *Motion for New Trial,* it was brought to the attention of the trial judge the utter failure to properly charge constituted prejudicial error and was irremediable. The cold record (MORTENSON v. U. S., 322 U.S. 369 374—Syllabus 6) shows conclusively that Petitioner never deviated from the position stated in said *Motion.* He also advanced the *alternative* argument that "good faith" and the definition of "used cars" should have been submitted to the jury. In the circumstances, JOHNSON v. U. S., supra, has no application

to the instant cause (UNITED STATES v. BALLARD, 322 U.S. 78, 82-85).

On pp. 9-10, the United States in attempting to justify failure to state correctly the *crucial* issues to the jury in this cause, declares: "Since the offense was a *simple one* (italics supplied), the charge could properly be succinct." We concede that Petitioner is an unimportant person, but our laws were made for the unimportant as well as the important persons (HOMMA v. PATTERSON, 327 U.S. 759, 760). We can find no better reply to this rather unusual assertion than that contained in DAVIS v. U. S., 328 U.S. 582, 597 (MR. JUSTICE FRANKFURTER): "It is easy to make light of insistence on scrupulous regard for the safeguards of civil liberties when invoked on behalf of the unworthy. It is too easy. History bears testimony that by such disregard are the rights of liberty extinguished, heedlessly at first, then stealthily, and brazenly in the end."

C.

Finally, it is noteworthy that the Government does *not* challenge Petitioner's claim that the proceedings in the trial court were embalmed with an atmosphere of hostility as to deny him the substance of a fair trial, in violation of the Fifth Amendment.

Respectfully submitted,

BERNARD A. GOLDING,
432 Niels Esperson Bldg.,
Houston, Texas,
Counsel for Petitioner.

It does not seem out of place to here quote a recent and fitting statement from Judge Hutcheson in Thomas v. U. S., 162 F. (2) 301, 304:
"The hard won safeguards of human liberty, enshrined in protective rules of the kind violated here, ought not to be done lip service to be recognising their breaches but holding them harmless."